



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)



C. L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Interim Director

August 24, 2009

Flying Joseph Ranch LLC  
c/o Jim Speck, Attorney  
PO Box 987  
Ketchum, ID 83340

RECEIVED

AUG 27 2009

Department of Water Resources  
Eastern Region

### CERTIFIED MAIL

**Re: Notice of Violation of Idaho Code Section 42-351  
Order to Cease and Desist Illegal Diversion**

Dear Gentlemen,

The Idaho Department of Water Resources ("IDWR") has determined that the Flying Joseph Ranch, LLC ("FJR"), is in violation of Idaho Code §42-351. The violation is associated with unauthorized diversion of surface water for filling a pond located within the NE1/4SE1/4 of Section 19, Township 13 North (T13N), and Range 23 East (R23E). On May 21, 2009, IDWR sent FJR a letter regarding the potential unauthorized use of surface water within the above referenced legal description. The notice advised FJR of the potential unauthorized use and asked that FJR identify water rights for the surface water diversion or else cease and desist further diversion of water to the pond in question.

IDWR records indicate that FJR filed a water right transfer application with IDWR on June 5, 2009. The purpose of this application was to transfer a portion of water right 73-147A, a surface water right, to cover the diversion of surface water to the pond. Please note that the filing of an application for transfer does not authorize the continued diversion of surface water to the pond in question. Continued diversion of surface water to the pond is illegal until a permanent transfer or another means of providing water has been approved by IDWR.

On July 16, 2009, IDWR was informed by Ted O'Neal, Watermaster of Water District 73, that surface water was again being diverted into the pond in question. The initial and continued diversion of surface water during 2009 to the pond located in Section 19, Township 13 North, Range 23 East, constitutes a violation of Idaho Code §42-351, illegal diversion of water without a water right.

Under Idaho Code, Section 42-1701B, the director of IDWR may commence an administrative enforcement action to obtain a remedy for a violation and seek a civil penalty for non-irrigation use equal to \$50 per one-tenth cubic foot per second of water diverted per calendar day, or \$50 per two-tenths of an acre-foot of water diverted to storage, up to \$50,000 per year for water illegally used or diverted, in whole or in part, for water illegally used or diverted.

Pursuant to Idaho Code, Section 42-1701B, IDWR requires that the following action be taken:

1. **CEASE and DESIST** any further diversion of surface water to the pond located within Section 19, T13N, R23E that is not authorized by a valid water right. Diversion of water shall not be resumed until authorization is received from the Department through an approved water right transfer or through another water right approved specifically for this use.
2. Pay an agreed civil penalty in the amount of thirty three thousand six hundred dollars (\$33,600), which is the maximum penalty authorized by law for an illegal diversion of water of this magnitude. The civil penalty shall be due and payable to IDWR no later than July 30, 2005.

If you object to any provision in this notice, you have the opportunity to schedule a compliance conference to discuss the violation with IDWR. Your written request must be received at this office within 14 days of receipt of this notice. Failure to comply with the requirements of this notice will be cause for IDWR to initiate a civil enforcement action through the Attorney General in district court.

Please note that there may be options available to you with respect to obtaining a valid water right for the unauthorized use described above. These options can be further explored with IDWR at a compliance conference. If you have questions concerning this matter please contact me directly at (208) 287-4959.

Respectfully,



Tim Luke

Manager, Water Distribution Section

cc: Joseph Clark, Flying Joseph Ranch, LLC  
Ted O'Neal, Water District 73 Watermaster  
Bob Foster, IDWR Salmon Field Office  
Lyle Swank, IDWR Eastern Regional Manager  
John Homan, Idaho Deputy Attorney General